

EXHIBIT 9

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

BESSEMER SYSTEM FEDERAL CREDIT UNION, a not-for-profit federal credit union,

Plaintiff,

-against-

FISERV SOLUTIONS, LLC, a Wisconsin limited liability corporation f/k/a FISERV SOLUTIONS, INC., a Wisconsin corporation,

Defendant.

CIVIL DIVISION

No. 2018-3022

FILED IN MERCER
COUNTY
RUTH A. BICE
PROTHONOTARY

2018 OCT -9 PM 2:50

NOTICE OF HEARING FOR SEIZURE OF PROPERTY

TO: Fiserv Solutions, LLC
225 Fiserv Drive
Brookfield, WI 53008

Fiserv Solutions, LLC
c/o Richard Epstein, Esq
68 Buhl Boulevard.
Sharon, PA 16146

YOU ARE HEREBY NOTIFIED THAT:

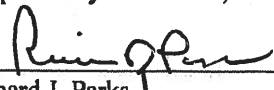
1. Plaintiff has commenced an action of replevin and has filed a motion for seizure of the property described in the complaint. A copy of the complaint and motion are attached to this Notice.

2. A hearing on the motion has been scheduled for the 22nd day of October, 2018, at 9 o'clock a.m. in Courtroom No. 2 Court of Common Pleas of Mercer County, Mercer County Court House, North Diamond Street, Mercer, PA 16137.

3. You may appear in person or by a lawyer at the time and place set forth, or file written objections setting forth your reasons why the property should not be seized.

4. Your failure to appear at the hearing may result in the seizure of the property claimed by Plaintiff before a final decision in this case.

Respectfully submitted,


Richard J. Parks
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
7 West State Street, Suite 100
Sharon, Pennsylvania 16146
724-981-1397

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

BESSEMER SYSTEM FEDERAL CREDIT UNION, a not-for-profit federal credit union,

Plaintiff,

-against-

FISERV SOLUTIONS, LLC, a Wisconsin limited liability corporation f/k/a FISERV SOLUTIONS, INC., a Wisconsin corporation,

Defendant.

CIVIL DIVISION

No.

MOTION FOR ISSUANCE OF WRIT OF SEIZURE

Plaintiff Bessemer System Federal Credit Union, by and through its undersigned counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP and Vedder Price P.C., respectfully present as follows:

1. A Complaint in Replevin has been filed with this Honorable Court at the above number and term. A true and correct copy of the Complaint in Replevin is marked Exhibit 1, attached hereto, and made a part hereof.
2. Plaintiff's operations and interest in the property is substantially impaired through Fiserv's continued possession of the property. Fiserv's possession of the records, without allowing Bessemer access, renders it impossible for the Plaintiff to conduct daily banking operations.
3. A writ of seizure must be issued as a result of Fiserv's actions to conceal the Property. Fiserv has maintained the property, yet refused to Bessemer the necessary access. Given the portability of deleting, moving, and/or concealing records, a writ must be issued providing Bessemer an immediate right to the records. Moreover, Fiserv has security problems

threatening the confidentiality of the records in its custody and that permit unauthorized individuals to access and change such records. Thus, while in Fiserv's custody, the records may be disposed, wasted, and removed outside this jurisdiction.

4. The Plaintiff desires to post a bond in double the value of the personal property identified in the replevin action as shall be found by the Court to be appropriate and obtain immediate possession of the personal property described in the complaint.

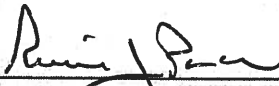
WHEREFORE, it is requested that this Honorable Court cause a writ of seizure to be issued for the property set forth in the complaint in replevin upon the posting of a proper bond.

Dated: October 9, 2018

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Of Counsel:

Charles J. Nerko (*pro hac vice* forthcoming)
VEDDER PRICE P.C.
1633 Broadway
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By: 
Richard J. Parks
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Attorneys for Plaintiff
Bessemer System Federal Credit Union

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

BESSEMER SYSTEM FEDERAL CREDIT UNION, a not-for-profit federal credit union,

Plaintiff,

v.

FISERV SOLUTIONS, LLC, a Wisconsin limited liability corporation f/k/a FISERV SOLUTIONS, INC., a Wisconsin corporation,

Defendant.

CIVIL DIVISION

No. 2018-3022

COMPLAINT IN REPLEVIN

Filed on Behalf of Plaintiff
Bessemer System Federal Credit Union

Counsel of Record for This Party:

RICHARD J. PARKS, ESQUIRE
PA ID #40477

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JURY TRIAL DEMANDED

FILED IN MERCER
COUNTY
2018 OCT -9 PM 2:47
RUTH A. BICE
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

**BESSEMER SYSTEM FEDERAL CREDIT
UNION, a not-for-profit federal credit
union,**

Plaintiff,

-against-

**FISERV SOLUTIONS, LLC, a Wisconsin
limited liability corporation f/k/a FISERV
SOLUTIONS, INC., a Wisconsin
corporation,**

Defendant.

CIVIL DIVISION

No. _____

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Mercer County Lawyers' Referral Service
c/o Mercer County Bar Association
P.O. Box 1302
Hermitage, PA 16148

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

BESSEMER SYSTEM FEDERAL CREDIT UNION, a not-for-profit federal credit union,

Plaintiff,

-against-

FISERV SOLUTIONS, LLC, a Wisconsin limited liability corporation f/k/a FISERV SOLUTIONS, INC., a Wisconsin corporation,

Defendant.

CIVIL DIVISION

NO: _____

COMPLAINT IN REPLEVIN

Plaintiff Bessemer System Federal Credit Union, by and through its undersigned counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP and Vedder Price P.C., brings this Complaint in Replevin against Defendant Fiserv Solutions, LLC, formerly known as Fiserv Solutions, Inc., and states as follows upon knowledge as to its own actions and information and belief as to others' actions:

1. Bessemer System Federal Credit Union (hereinafter "Bessemer" or the "Credit Union") is a federally chartered not-for-profit credit union engaged in interstate business activities. Bessemer has an address of 106 Woodfield Drive, Greenville, Pennsylvania 16125. Bessemer routinely engages in non-localized interstate business activities, including through electronic transactions which allow Bessemer to transact business with its members across state lines.

2. Defendant Fiserv Solutions, LLC (hereinafter "Fiserv") is a limited liability company organized under the laws of the State of Wisconsin with a principal place of business at

255 Fiserv Drive, Brookfield, Wisconsin 53008. Defendant Fiserv Solutions, LLC was formerly known as Fiserv Solutions, Inc., a Wisconsin corporation.

3. Bessemer is a member-owned, not-for-profit cooperative of consumers committed to serving the financial needs of its members.¹ Bessemer's branch is located in Mercer County.

4. Fiserv provides account processing solutions to financial institutions. An account processing system is the "brains" behind a financial institution, processing and recording all transactions for the financial institution, including those handled through tellers as well as customers when using Bessemer's online banking system.

5. Bessemer and Fiserv entered into a "master agreement" dated as of July 1, 2014, as amended (the "Agreement"). A copy of the Agreement will be filed under seal at a further date if necessary.²

6. Pursuant to the Agreement, Fiserv would provide Bessemer with a number of financial platforms, services, and maintenance in order to run the day-to-day transactions and operations of the credit union. Bessemer is highly dependent on Fiserv's services, as all of the Credit Union's day-to-day account transactions are processed by Fiserv and recorded in records in its custody.

7. Bessemer's records, including member account information, customer accounts, transaction history, financial records, and operational data (collectively the "Records" or "Property") are in Fiserv's custody. Bessemer granted Fiserv access to this Property so that

¹ Bessemer provides certain services to nonmembers. References to "members" in this Complaint apply to members of Bessemer and, where applicable, any nonmember customer of Bessemer.

² The terms of the Agreement require the parties to maintain its confidentiality. Given the exigent circumstances in this case, Plaintiff must file the Complaint first and will seek to have the Agreement filed subsequently under seal.

Fiserv could perform account processing services on Bessemer's behalf. These records, however, are Bessemer's personal property relating to Bessemer's members and generated through the operation of the credit union.

8. Due to a series of contractual breaches and other misconduct by Fiserv,³ on or about April 11, 2018, Bessemer sent Fiserv notice of termination indicating that it was terminating the Agreement. A copy of the notice of termination is attached hereto as Exhibit A.

9. Pursuant to the notice of termination, Bessemer demanded that Fiserv return Bessemer's Records in a reasonable, commercially usable form so that Bessemer can continue its daily operations (and to eventually facilitate the transfer of the Records to another vendor).

10. Fiserv has failed and refused to return Bessemer's Records to Bessemer. Rather, Fiserv is improperly withholding Bessemer's private property and holding it hostage.

11. Bessemer's operations have been severely damaged as a result of Fiserv's failure to return Bessemer's Property (including its member account records). Without access to the Records, Bessemer is unable to process member transactions or conduct normal business for its members. Bessemer cannot function as a credit union without the return of the Property as Bessemer cannot process transactions for its members without the proper records supporting each transaction.

12. Fiserv's misconduct has created exigent circumstances necessitating Bessemer's immediate need and access to the Records. Bessemer's Records maintained in Fiserv's custody are currently subject to security problems known to Fiserv which potentially expose Bessemer's members to theft and compromises the confidentiality of their sensitive financial information.

³ Bessemer has filed and served a writ of summons commencing that action at case number No. 2018-01130 in the Court of Common Pleas of Mercer County.

On the heels of press reports indicating Fiserv had a security problem affecting customers at hundreds of financial institutions,⁴ Bessemer conducted a review of the privacy and security controls relating to the sensitive non-public member information belonging to Bessemer that is being held by Fiserv. This security review uncovered additional security problems at Fiserv, including several critical security problems with the “Virtual Branch” system in which Fiserv provides online banking services. These security problems include a vulnerability that permits unauthorized individuals to gain access to member accounts, access member information, and make unauthorized online banking transactions on behalf of members. Bessemer reported these security problems to Fiserv on September 28, 2018. Fiserv has not timely taken appropriate action to address these security problems, has failed to respond appropriately to Bessemer’s inquiries concerning the scope of these problems and any remediation of these security problems, and has failed to provide adequate assurances that there is no ongoing risk to the confidentiality of Bessemer’s Records. Thus, Bessemer’s Records remain subject to known security problems while in Fiserv’s custody.

13. Fiserv has also suspended Bessemer’s members from registering for online banking access, causing damage to Bessemer. Bessemer cannot provide its members, or prospective members, with online banking service for any new accounts they wish to open until Bessemer recovers its member information from Fiserv. Fiserv’s refusal to allow Bessemer and its authorized members to access their own Records cripples and damages Bessemer’s ability to operate as a credit union.

⁴ See Krebs on Security, “Fiserv Flaw Exposed Customer Data at Hundreds of Banks,” <https://krebsonsecurity.com/2018/08/fiserv-flaw-exposed-customer-data-at-hundreds-of-banks>.

14. Fiserv's refusal to return the Records to Bessemer is causing ongoing, substantial, and irreparable damage to Bessemer and its members.

15. Fiserv has no legitimate claim to ownership or the exclusive possession of the Records. The data is exclusively owned by Bessemer, is needed to serve its members, and was provided to Fiserv solely for the limited purposes of Fiserv's provision of services for the Credit Union as authorized by Bessemer.

16. Fiserv's failure to return the Records, and its continued possession of the Credit Union's Property, is an unauthorized retention and conversion of Bessemer's property interests.

17. Bessemer has an immediate right to the return and possession of the Records but Fiserv has improperly refused to return the Property.

18. It is a breach of Bessemer's, and its member's, property rights for Fiserv to withhold the Records after the termination of the Agreement, especially when doing so exposes them to known security problems that threaten the confidentiality of sensitive financial information pertaining to thousands of consumers.

19. Upon information and belief, the property to be replevied is: any and all records, including member account information, customer accounts, transaction history, financial records, and operational information and any and all customer and processing data in the possession of Fiserv which relates to Bessemer System Federal Credit Union or any of its past, present, or future members or customers.

20. Upon information and belief, Bessemer avers that, the value of the Records being withheld by Fiserv is \$5,000.00, based on the reasonable value of the computer system and storage media that is storing and can be used to return the Records to Bessemer. Fiserv, however, has no legitimate economic interest in the Records, and Fiserv's ongoing conduct and

retention of Bessemer's Property is causing ongoing and irreparable damage to Bessemer due to the wrongful retention of the Records to Bessemer's detriment and exclusion.

21. Upon information and belief, the location of Bessemer's Property is a computer system in Fiserv's custody.


22. This claim is based upon the material facts known to Bessemer as a result of the termination of the Agreement with Fiserv, Fiserv's failure to return the Records to Bessemer despite due demand, and Fiserv's failure to safeguard the confidentiality of such Records.

Remainder of Page Intentionally Left Blank

WHEREFORE, Bessemer System Federal Credit Union respectfully requests judgment for possession against Fiserv for all of the Plaintiff's personal property in the possession of Fiserv and that this Court immediately enjoin Fiserv and any third party who may have received such property from Fiserv without Bessemer's authorization from any further use, possession, or exercise and control over any personal property owned by Bessemer.

Dated: Oct. 9, 2018

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

By: 
Richard J. Parks PA ID #40477
7 West State Street, Suite 100
Sharon, PA 16146
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Of Counsel:

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Email: cnerko@vedderprice.com

Attorneys for Plaintiff
Bessemer System Federal Credit Union

VedderPrice

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London
San Francisco
Los Angeles
Singapore
vedderprice.com

April 11, 2018

Charles J. Nerko
+1 212 407 6933
cnerko@vedderprice.com

VIA FEDEX OVERNIGHT AND EMAIL

Fiserv Solutions, Inc.
2601 Network Blvd., Ste. 600
Frisco, TX 75034
amy.vandamme@fiserv.com
Attn: Amy L. Vandamme, Esq.

Re: Bessemer System Federal Credit Union – Notice of Termination

Dear Amy:

As you know, we represent Bessemer System Federal Credit Union (the “**Credit Union**”) in connection with its claims against Fiserv Solutions, Inc. (“**Fiserv**,” “**you**,” or “**your**”). The claims arise out of the parties’ relationship and a Master Agreement as may have been amended or supplemented (the “**Master Agreement**”) between you and the Credit Union.

The Credit Union provides notice that it is terminating the Master Agreement. This termination is based on Fiserv’s acts and omissions, including:

1. Fiserv’s failure to perform as required under the Master Agreement;
2. Fiserv’s failure and inability to cure material breaches of the Master Agreement (including those with respect to the Credit Union’s information or other intellectual property), despite demands from the Credit Union;
3. Fiserv’s anticipatory repudiation of the Master Agreement through its manifestation of intent not to timely perform as required under the Master Agreement, including by the statements made by Vincent Brennan of Fiserv in his April 5, 2018 email correspondence to the Credit Union that Fiserv’s “cure team” was only being recently assembled months after the Credit Union provided its notice of breach, and that Fiserv would require a “2 week timeframe” for a “next discussion” in advance of arriving at a “satisfactory resolution”; and
4. Fiserv’s breaches of the implied covenant of good faith and fair dealing by acting in a manner that deprives the Credit Union of the right to receive the benefits of the Master Agreement.

The Credit Union demands that Fiserv return the Credit Union’s files and information in a reasonable, commercially usable form, that Fiserv take appropriate measures to ensure an orderly transition of

Fiserv Solutions, Inc.
April 11, 2018
Page 2

services to the successor vendor(s) the Credit Union may select, and that Fiserv provide any other cooperation or assistance that may be reasonably requested by the Credit Union.

We provide notice that Fiserv's failure to comply with the foregoing would cause irreparable injury by jeopardizing the provision of essential banking services. Accordingly, our client reserves its right to seek injunctive or other appropriate relief.

This notice is without prejudice to any of the Credit Union's rights, powers, privileges, remedies, and defenses, now existing or hereafter arising, all of which are hereby expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles Nerko", written in a cursive style.

Charles J. Nerko

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA

**BESSEMER SYSTEM FEDERAL CREDIT
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Plaintiff,

-against-

**FISERV SOLUTIONS, LLC, a Wisconsin
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corporation,**

Defendant.

CIVIL DIVISION

NO: _____

VERIFICATION

I, Joy E. Peterson, duly authorized representative of Bessemer System Federal Credit Union and on behalf of the Plaintiff states that she has reviewed the Complaint in Replevin and that the facts set forth therein are true based upon her personal knowledge or information and belief. This statement is made and signed subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

DATE: 10/9/2018

Joy E. Peterson

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Richard J. Parks

Signature: 

Name: Richard J. Parks

Attorney No. (if applicable): 40477

FILED IN MERCER
COUNTY
2018 OCT -9 PM 2:47
RUTH A. BICE
PROTHONOTARY